

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 25, 2004

IN RE:)	
)	
PETITION OF ON-SITE SYSTEMS, INC.)	DOCKET NO.
TO EXPAND ITS SERVICE AREA TO INCLUDE)	03-00329
AN AREA KNOWN AS SEVIER COUNTY)	

**ORDER REOPENING DOCKET,
GRANTING INTERVENTION TO EAST SEVIER UTILITY DISTRICT,
GRANTING PETITION FOR RECONSIDERATION AND
APPOINTING HEARING OFFICER ON THE MERITS**

This matter came before Director Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 26, 2004, for consideration of the *Petition for Reconsideration, Intervention and/or Declaratory Order* filed by the East Sevier County Utility District ("East Sevier") on April 7, 2004.

Background

On April 6, 1994, On-Site Systems, Inc. (now called Tennessee Wastewater Systems, Inc., hereinafter "Tennessee Wastewater")¹ received a Certificate of Public Convenience and Necessity ("CCN") in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County, Tennessee. Since

¹ See *In re Petition of On-Site Systems, Inc. to Change Its Name to Tennessee Wastewater Systems, Inc.*, Docket No. 03-00518, *Order Granting Approval of the Petition of On-Site Systems, Inc. for a Name Change*, (February 19, 2004)

that time, Tennessee Wastewater has been granted approval to expand its service territory to include other areas in Tennessee.

On May 9, 2003, Tennessee Wastewater filed a petition in this docket to amend its CCN to expand its service area to include the unincorporated areas of Sevier County, “with the exception of the area presently being served by East Sevier Utility District and the areas presently within the city limits and planned growth area of Sevierville, Pigeon Forge, Gatlinburg and Pittman Center.”² On September 24, 2003, Tennessee Wastewater submitted a filing to amend its petition to exclude two areas located on Wears Valley Road in Sevierville presently served by Integrated Resources Management Utility, Inc.: the Valley Mart Exxon and Cove Mountain Realty. In its petition, Tennessee Wastewater contended that Sevier County and the City of Pigeon Forge had declined to provide wastewater treatment in the requested service area. Tennessee Wastewater submitted a letter dated February 12, 2003 from John Jagger, City of Pigeon Forge Community Development Director, stating that the City of Pigeon Forge would take a neutral stance on this matter. Tennessee Wastewater also submitted a March 6, 2003 letter from Larry Waters, Sevier County Executive, stating that Sevier County did not presently have plans to provide municipal or county sewers into unincorporated areas of the county.

At a regularly scheduled Authority Conference held on October 21, 2003, the panel voted unanimously to approve the amendment to Tennessee Wastewater’s CCN. The Order reflecting the Authority’s action was issued on March 24, 2004.

East Sevier’s Petition

On April 7, 2004, East Sevier filed a *Petition for Reconsideration, Intervention and/or a Declaratory Order* (“*Petition*”). In its *Petition*, East Sevier asserts that it was not given actual

² *Petition of On-Site Systems, Inc. to Amend its Certificate of Convenience and Necessity*, p. 1 (May 9, 2003)

notice of the proceedings in this matter notwithstanding its rights being affected by a determination of issues in this docket. If it had been given notice, East Sevier contends it would have intervened in this docket. East Sevier also asserts that it has statutory authority to provide service beyond its territorial boundaries and intends to continue doing so. It alleges that Tennessee Wastewater is representing to customers, prospective customers and to East Sevier's engineers that no entity other than Tennessee Wastewater is allowed to provide wastewater treatment services to any customers in the remaining areas of Sevier County without Tennessee Wastewater's written consent. East Sevier seeks reconsideration of the Authority's decision to grant the amendment to Tennessee Wastewater's CCN.

In the alternative to reconsideration, East Sevier requests a declaratory order that the Authority's March 24, 2004 Order does not provide Tennessee Wastewater with exclusive rights to provide services in the remainder of Sevier County. Finally, because the exclusivity of the CCN is essentially the same issue that is currently pending before the Authority in Docket No. 04-00045, East Sevier requests that any action on the reconsideration or the request for a declaratory order be stayed pending the outcome of the contested case hearing in Docket No. 04-00045.³

On April 15, 2004, the Authority issued a Notice of Filing requesting that any response to East Sevier's *Petition* be filed by April 19, 2004. On April 19, 2004, Tennessee Wastewater filed an objection to the *Petition* stating that: 1) the *Petition* should be dismissed because East Sevier is not a party and has no standing to file a petition for reconsideration of the final order; 2) the request to intervene is untimely because it was not filed seven days before the contested case

³ See *In re Petition of Tennessee Wastewater Systems, Inc. for Authority to Amend Petition*, Docket No. 04-00045 (February 11, 2004). East Sevier filed a *Petition to Intervene* in that docket on March 15, 2004 which was granted during an Authority Conference on March 22, 2004. *Id.*, *Order Granting Petitions to Intervene and Appointing a Hearing Officer* (May 13, 2004).

hearing; and 3) East Sevier lacks standing because Tennessee Wastewater's petition for CCN excludes the area currently served by East Sevier and East Sevier has never sought to include within its boundaries the area Tennessee Wastewater requested in the amendment to the CCN.

Findings

It appears from the record in this docket that Tennessee Wastewater did not provide actual notice of its petition to East Sevier. In its response to East Sevier's *Petition*, Tennessee Wastewater does not refute East Sevier's claim that it did not receive actual notice of the request to expand Tennessee Wastewater's territory. The record in this docket reveals that on May 13, 2003, the Authority sent a letter to Charles Pickney of Tennessee Wastewater and asked the following:

Have all of the utility districts within the proposed service territory been notified of your intent to provide wastewater service?⁴

On May 16, 2003, Tennessee Wastewater responded as follows:

Webb Creek Utility District was contacted by phone and we were advised that they only serve the area of Pittman Center. East Sevier County Utility District serves a portion of the east side of the county and we excluded their chartered territory. Mr. Larry Waters, County Executive for Sevier County, provided the legal document describing that territory.⁵

While Tennessee Wastewater correctly asserts that East Sevier did not intervene seven days before the hearing in this case as required by Tenn. Comp. R. & Regs. 1220-1-2-.08(3), the Authority finds that East Sevier did not receive notice of the proceedings that were held on October 21, 2003 and should not be prevented from seeking relief in this docket at this time.

In TRA Docket No. 98-00156, the Authority re-opened the docket, after deliberations granting a CCN, to allow two utility districts to intervene to present evidence regarding the

⁴ Letter from TRA to Charles Pickney, p 1 (May 13, 2003)

⁵ Letter from Charles Pickney, Jr to TRA, p 3 (May 16, 2003)

request for a CCN where those utility districts did not receive notice of the proceeding in which the CCN was granted. The Order reflecting the Authority's action noted that the Authority action was "rendered in recognition of Tennessee Consumer Advocate v. TRA . . . , requiring administrative agencies to take pains to adhere to the basic rules of fairness."⁶ After re-opening the proceeding and granting the interventions, the Authority appointed a Pre-Hearing Officer to prepare the case for a second hearing that would include participation by the utility districts.

Tenn. Comp. R. & Regs. 1220-1-2-.08(1) states that petitions for intervention shall be granted in accordance with Tenn. Code Ann. §§ 4-5-310 and 65-2-107. Tenn. Code Ann. § 4-5-310(b) provides:

(b) The agency may grant one (1) or more petitions for intervention **at any time**, upon determining that the intervention sought is **in the interests of justice** and **prompt conduct of the proceedings shall not be impaired** by allowing the intervention. (Emphasis added.)

In the interests of justice, because East Sevier did not receive notice of the original CCN hearing in this docket, the Authority determined that East Sevier be allowed to intervene and its petition for reconsideration be considered as properly filed. The panel further voted to appoint General Counsel or his designee to serve as a Hearing Officer to render an initial order on the merits of Tennessee Wastewater's original petition and to request the Chairman of the Authority consider consolidation of this Docket with Docket No. 04-00045.

⁶ *In re Application of Tensasco Pipeline Corporation for a Certificate of Public Convenience and Necessity to Provide Intrastate Natural Gas Services*, Docket No 98-00156, *Order Re-opening Case for Additional Consideration*, p 9 (November 16, 1998) (citation omitted)

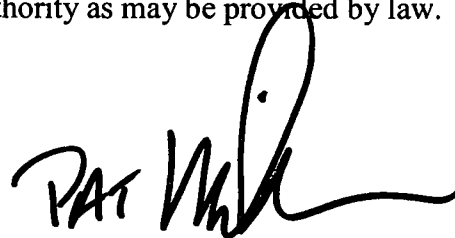
IT IS THEREFORE ORDERED THAT:

1. This docket is re-opened for the purpose of receiving additional evidence regarding Tennessee Wastewater's request to amend its CCN. The Chairman of the Authority is hereby requested to consider whether this docket shall be consolidated with TRA Docket No. 04-00045.

2. East Sevier County Utility District is granted leave to intervene and receive copies of any notices, orders or other documents in this matter.

3. East Sevier County Utility District's *Petition* is granted.


4. The Authority's General Counsel or his designee is appointed Hearing Officer in this matter to make findings of fact and conclusions of law, as necessary, and to render an initial decision on the merits of the petition of Tennessee Wastewater, pursuant to Tenn. Code Ann. § 4-5- 301 and § 65-2-111 and such other legal authority as may be provided by law.



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director